

NATIONAL CANNERS ASSOCIATION

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CANNERS APPEAR BEFORE SHANNON COMMITTEE

Representatives of the canning industry appeared before the Shannon Committee at its hearing in Chicago on November 15th to present the views of the industry with respect to government competition with private enterprise. The Shannon Committee, appointed at the last session of Congress, has held hearings in various parts of the country and is expected to present its report to Congress at the session opening in December. The appearance of representatives of the Association at this hearing was authorized by the Administrative Council at a meeting held in Chicago on October 15.

Witnesses appearing on behalf of the canning industry included Marc C. Hutchinson, Fennville, Mich., President of the National Canners Association; Elmer E. Chase, San Jose, Calif., President of the Canners League of California; Howard C. Morgan, Traverse City, Mich., President of the Michigan Canners Association; Preston McKinney, San Francisco, Calif., Secretary of the Canners League of California; James Moore, Rochester, N. Y.; Roy M. Pike, Vernalis, and Roy E. Cassidy, Marysville, Calif.

The statement made to the Committee by President Hutchinson expressed the general attitude of the Association on the subject. The other witnesses who testified presented detailed facts with respect to various localities and different branches of the industry. The statement made by President Hutchinson follows:

During the last few years there has been injected into the canning industry the financial power of the U. S. Government with its unlimited resources, in a discrimination between canners, aiding some canners by loans in unfair competition to others who were not so aided. This has developed, as might be expected, to a point where the government is not only in the position of the banker for some canners, but, in order to protect its loans, the government already finds itself in the canning business, selling goods and manufacturing goods in competition with privately owned and operated canneries.

Through successive acts of Congress, Federal agencies are authorized to make loans to cooperative associations for the purpose of merchandising food products, and for the construction and acquisition by purchase or lease of marketing facilities for processing food products. This word "processing" has been construed by the government agencies to mean "canning" so that cooperative associations may obtain loans for the purchase of canning plants.

This legislation for the benefit of cooperatives has been extended by the Reconstruction Finance Corporation Act so that the Reconstruction Finance Corporation is authorized to make loans to bona fide institutions organized under the laws of any state, for the purpose of enabling them to finance the orderly marketing of agricultural commodities. This has been construed to mean that loans will not be made directly to canners but that canners may organize their own credit associations which may obtain loans from the Reconstruction Finance Corporation. Thus the funds of the government are available to all canners for the purpose of marketing, and are available to cooperatives (but not to other canners) for the purpose of acquiring plants and for production as well as for marketing.

The National Canners Association is not antagonistic to cooperatives as such, but protests any and all injection of government funds into the financing of the canning industry, because that necessarily puts the government in the canning business, which in the past has been and should continue to be a private enterprise.

The government is indirectly in the canning business in that it acts as banker to certain favored persons in the canning business; supplies them with credit which their commercial standing would not enable them to obtain from private sources; and supplies this credit at a lower rate of interest than the prevailing commercial rate. The government thus enables these canners to compete unfairly with the other canners who depend upon regular banking sources for their credit.

The government is also directly in the canning business: First, when the government makes a loan secured by warehouse receipts and the loan is not paid, the government must then sell these canned foods in direct, and usually demoralizing, competition with the canning industry. Second, when the government makes a loan for the purpose of acquiring a plant and takes a mortgage thereon, if the loan is not paid, the government takes over the plant or takes charge of the business, thus engaging in the business of manufacturing in direct competition with the canning industry. This has been a gradual development; the government is getting more and more into the canning industry, and if this development continues, it is not an exaggeration to say that it is only a question of years when the canning industry of the country will be in the hands of the U. S. Government.

We have present today canners and growers from different parts of the country who will give your Committee particular facts. It is my purpose in this opening statement to describe the situation generally, as it exists in regard to the industry as a whole.

Today the canning industry has more than sufficient capacity to produce all the canned foods that the country will consume and that can be sold in export markets. Even during the great War, the canning industry was able to manufacture all the canned foods that were required for our domestic consumption, for our armies at home and abroad, and to supply such additional canned foods as were required by our Allies.

It is an obvious fact, though one sometimes forgotten, that the farmers of the country cannot be successful unless the canning industry is also successful. According to statistics of the Department of Agriculture, three-sevenths of all truck crops are sold to canners. This proportion is even more striking when it is realized that included among the remaining four-sevenths are many important products such as lettuce and melons, which are not canned. The canner provides the grower with a market, and unless the canner is reasonably prosperous, the growers' market will fail.

There are certain economic facts which will hardly be disputed. It is obvious that no more canned food can profitably be produced than can be profitably sold. Since 1919, there has been an over-capacity of canning plants. There is at present an over-production of fruits and vegetables. There is an unlimited possibility of still further over-production. Economic laws, however, tend to regulate over-production. To the extent that the canning industry cannot sell its canned foods, it will curtail its purchases from growers, and the growers will in turn cease to raise what they cannot sell. Thus in time production will adjust itself to consumption and prices will right themselves for both canners and growers. But if the government steps in with unlimited resources and a program of making loans to certain favored groups of canners, the progress of these economic laws is interrupted. Production will continue on the borrowed money. Thus prices will continue to fall and everyone will lose, canner and grower alike. It is obviously better for the grower to raise ten acres at a profit than fifteen at a loss.

It is impossible for me to exaggerate the concern with which this tendency of the government to interfere with the canning industry has been viewed by persons in that industry. The Administrative Council of the National Canners Association, at a meeting held in Chicago October 15th, passed the following resolution:

"Resolved, That the National Canners Association appear at the hearing of the Shannon Committee to be held in Chicago in November;

"That the Association express unalterable opposition to Government participation in business in competition with private enterprise;

"That the Association present witnesses who will give definite facts of instances where the Government has become engaged in the canning business and in other industries in competition with private enterprise through loans to cooperatives for the purpose of manufacturing and acquiring manufacturing plants, and who will show the disastrous effect of this on growers as well as canners;

"That the Association advocate legislation that no Government loans be made to canners or manufacturers, whether individuals or cooperatives, for the purpose of acquiring plants or processing or manufacturing;

"That a brief be prepared and filed at the hearing."

This completes my general statement on the subject. We have present canners from California, Michigan, and New York, and growers from California who will give you the facts as to government competition in their particular communities, and in this connection I hope you will remember that the growers' interests are really the same as the canners'.

At the conclusion of the testimony of the representatives of the industry, Spencer Gordon, of Covington, Burling & Rublee, counsel for the National Canners Association, stated that a brief would be prepared and filed with the Committee.

CANNED FOODS RATES FROM WEST COAST REDUCED

Reduced rates on canned foods from California, Oregon, Washington and Idaho to destinations in the east were authorized by a decision of the Interstate Commerce Commission announced on November 15. The proposal to reduce these rates as now approved by the Commission is practically identical with one made several years ago and disapproved on November 12, 1927, by the Commission on the basis of conditions existing up to and including the year 1926. The reduction is now granted largely to enable the rail carriers to recapture tonnage lost to steamship lines engaged in coast-to-coast traffic via the Panama Canal.

The schedules filed by the carriers, which by the vacation of the Commission's suspension order become effective November 25, reduce the rates on canned foods in carloads from origins in California, Oregon, Washington and Idaho to destinations in transcontinental groups B to J inclusive, extending from the Colorado common points on the west to Buffalo, New York, Pittsburgh, Pa., Wheeling, W. Va., Chattanooga, Tenn., and Birmingham, Ala., on the east. The rates prior to this reduction were \$1.05 and \$1.28, except to Colorado group J, to which they were 98 cents and \$1.195, and the new rates are 90 cents and \$1.05, minimum 60,000 and 40,000 pounds respectively. These rates apply on all carload shipments of canned foods except canned fish, in straight carloads, for which the transcontinental tariffs already provide a rate of 80 cents, minimum 77,000 pounds. To the new rates is also added the 2 cents emergency charge.

No fourth-section relief was sought in connection with the new schedules as the proposed rates were published to apply as maxima from and to intermediate points, and where resulting in lower combinations the through rates are to be reduced accordingly.

SUPREME COURT UPHOLDS MISBRANDING SECTION OF FOOD AND DRUGS ACT

In an opinion by Justice Sutherland, delivered November 7, the U. S. Supreme Court upheld the constitutionality of section 8, as amended, of the Federal Food and Drugs Act relating to the misbranding of foods, which provides in part that contents of a package shall be plainly marked and "that reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations" of Federal administrative bodies.

The case came to the Supreme Court on appeal from the U. S. District Court for the Western District of Louisiana, which

had sustained a motion to quash an indictment against a company charged with misbranding corn meal by labeling sacks to contain a greater quantity than they in fact did contain, on the ground that the act of Congress is unconstitutional.

The grounds relied on by the defense in its motion were that the offense is not defined with certainty and therefore the act violates the Fifth and Sixth Amendment to the Constitution, and that the act is also in conflict with Articles I, II, and III of the Constitution which separates the government into legislative, executive and judicial branches.

Excerpts from the opinion of Justice Sutherland follow:

First. The contention seems to be that the proviso makes it necessary to read section 8 as substantively prohibiting unreasonable variations in the weight, measure or numerical count of the quantity and contents of any package from that marked on the outside of the package; and that the test thereby indicated is so indefinite and uncertain that it fails to fix any ascertainable standard of guilt, or afford a valid definition of a crime.

We are of opinion that the construction thus sought to be put upon the act can not be sustained; * * * The substantive requirement is that the quantity of the contents shall be plainly and conspicuously marked in terms of weight, etc. We construe the proviso simply as giving administrative authority to the Secretaries of the Treasury, Agriculture, Commerce and Labor to make rules and regulations permitting reasonable variations from the hard and fast rule of the act and establishing tolerances and exemptions as to small packages, in accordance with section 3 thereof.

This construction avoids the doubt which otherwise might arise as to the constitutional point, and, therefore, is to be adopted if reasonably possible. We find nothing in the terms of the act to require a division of the proviso so that the power of regulation will apply to the establishment of tolerances and exemptions, but not to reasonable variations. We think both are included. As to this there would be no room for doubt if it were not for the presence of a comma after the word "permitted," or the absence of one after the word "established." Inserting the latter, the proviso would read: "That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established, by rules and regulations * * *." Punctuation marks are no part of an act. To determine the intent of the law, the court, in construing a statute, will disregard the punctuation, or will repunctuate, if that be necessary, in order to arrive at the natural meaning of the words employed.

Our attention is called to the fact that the House Committee on Interstate and Foreign Commerce, in reporting the bill which afterwards became the act in question, agreed with the view that the authority to make rules and regulations was confined to the establishment of tolerances and exemptions; and that the Senate Committee on Manufactures reported to the same effect. In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms.

Moreover, the practical and long continued construction of the executive departments charged with the administration of the act and with the duty of making the rules and regulations therein provided for, has been in accordance with the view we have expressed as to the meaning of the section under consideration. The rules and regulations, as amended on May 11, 1914, deal with the entire subject in detail under the recital "The following tolerances and variations from the quantity of the contents marked on the package shall be allowed: * * *" Then follows an enumeration of discrepancies, due to errors in weighing which occur in packing conducted in compliance with good commercial practice; due to differences in capacity of bottles and similar containers, resulting from unavoidable difficulties in manufacture, etc.; or in weight due to atmospheric differences in various places, etc. These regulations, which cover variations as well as tolerances and exemptions, have been in force for a period of more than 18 years, with the silent acquiescence of Congress. If the meaning of the statutory words was doubtful, so as to call for a resort to extrinsic aid in an effort to reach a proper construction of them, we should hesitate to accept the committee reports in preference to this contemporaneous and long continued practical construction of the act on the part of those charged with its administration. Such a construction, in cases of doubtful meaning, is accepted unless there are cogent and persuasive reasons for rejecting it.

Second. The contention that the act contravenes the provisions of the Constitution with respect to the separation of the governmental powers is without merit. That the legislative power of Congress can not be delegated is, of course, clear. But Congress may declare its will, and after fixing a primary standard, devolve upon administrative officers the "power to fill up the details" by prescribing administrative rules and regulations. That the authority conferred by the act now under review in this respect does not transcend the power of Congress is not open to reasonable dispute. The effect of the provision assailed is to define an offense, but with directions to those charged with the administration of the act to make supplementary rules and regulations allowing reasonable variations, tolerances and exemptions, which, because of their variety and need of detailed statement, it was impracticable for Congress to prescribe. The effect of the proviso is evident and legitimate, namely, to prevent the embarrassment and hardship which might result from a too literal and minute enforcement of the act, without at the same time offending against its purposes. The proviso does not delegate legislative power, but confers administrative functions entirely valid within principles established by numerous decisions of this court, of * * *.

ITALIAN PRODUCTION OF CHERRIES IN BRINE

Although provisional figures of the Italian cherry production for 1932 indicate that the yield was somewhat larger than last year, the quantity of cherries preserved in brine was markedly below the level of 1931, according to the American consul at Naples. Furthermore, the difficulties in finding foreign outlets for brined cherries caused the packers to go through a most unsatisfactory season.

Preliminary statistics of the 1932 Italian cherry crop which differ widely from the final figures show a yield of 141,849,440 pounds, as compared with 118,800,000 pounds in 1931.

Exports of cherries in brine from all of Italy from January to June, 1931, amounted to 3,692,802 pounds valued at \$380,592, as compared with 3,069,290 pounds valued at \$246,500 during the same period of 1932.

TOMATO PACK IN THE OZARK DISTRICT

The following table shows the pack of tomatoes for the last three years, as reported by the Ozark Packing Corporation, in the Ozark district, which includes tomato producing sections of Missouri, Kansas, Arkansas and Oklahoma:

	1930	1931	1932
No. 1, 10-ss.....	300,816	90,674	292,256
No. 1, tall.....	2,250	1,000
No. 300.....	92,004	17,308	13,296
No. 303.....	242,468	39,640	23,781
No. 95.....	1,000
No. 2.....	2,475,184	1,883,703	2,001,886
No. 2½.....	220,110	125,449	78,951
No. 3.....	11,988	7,000	3,000
No. 10.....	80,645	59,552	67,444
Total.....	3,426,365	2,112,650	2,482,614

NEW YORK PACK STATISTICS

The packs of corn, succotash, green and wax beans in New York in 1932 as compared with the packs in earlier years, in cases of No. 2's, as reported by the Association of New York State Cannerys, were as follows:

	Corn Cases	Succotash Cases	Wax beans Cases	Green Beans Cases
1925.....	1,307,716	115,881	336,806	940,300
1927.....	716,486	38,334	196,105	692,906
1929.....	743,835	59,975	513,299	1,070,566
1930.....	636,358	63,838	457,391	1,008,358
1931.....	1,086,789	52,438	331,823	843,654
1932.....	490,529	15,884	132,587	600,976

NOVEMBER CROP REPORT

Following are excerpts from the crop report of the U. S. Department of Agriculture, based upon information available as of November 1:

Snap beans in southern Florida will be greatly reduced by the recent heavy rainfall, and production of the fall crop in that state is now expected to be only half that of last autumn, while Texas may have almost double its light crop of 1931, making the total for the two states 984,000 bushels, as against 1,953,000 last season.

Cauliflower of the fall and winter crop in California may amount to 2,392,000 crates, or 400,000 more than last year.

Spinach in Norfolk district of Virginia may amount to 1,400,000 bushels this fall, as against 288,000 a year ago. Both acreage and yield are greatly increased this season.

Tomatoes of the fall crop in Florida and southern Texas may total 527,000 bushels, or just about twice as many as last year.

Cranberry prospects declined slightly during October, and the estimate for five leading states is now 520,350 barrels, or 130,000 less than in 1931. New Jersey has an especially light crop, and the Massachusetts crop is below average in size.

The following telegram to the department from Texas, under date of November 14, reports the damage done by the cold wave in that section:

The cold wave during the week end which attained its greatest severity Sunday morning, November 13, was accompanied by frost that extended as far south as the upper half of the Lower Rio Grande Valley. A preliminary survey indicates that the fall tomato crop in Atascosa County and the Winter Garden and Laredo areas was damaged severely, probably averaging 75 per cent. A limited acreage of snap beans, eggplant and peppers in Winter Garden was practically ruined. Snap beans in the Corpus Christi area are probably a total loss. Damage to beans and tomatoes in the Lower Valley averages slight but the few beans in upper portion of the Valley were damaged 25 to 50 per cent. On the basis of state acreage this means 50 per cent damage to tomatoes and snap beans, 25 to 30 per cent to peppers, and 15 to 20 per cent to eggplant.

TRUCK CROP SHIPMENTS

Combined shipments of 32 fruits and vegetables decreased to 12,395 cars for the week ended November 12, which was about 1,500 less than for the opening week of November and 4,600 cars below the record of last season. Apples totaled 2,730 cars; potatoes 2,310, grapes 1,410, oranges 850, and lettuce 765 cars. Grapefruit shipments decreased to 360 cars and were only half as heavy as a year ago. Spinach was becoming active in Virginia and Texas, with tangerines starting from Florida.

MEMBER OF BOARD OF DIRECTORS KILLED IN ACCIDENT

R. A. Greb, President of the Clintonville Canning Company, Clintonville, Wis., and a member of the Board of Directors of the National Cannery Association, was instantly killed in an automobile accident on October 28. Mr. Greb had been for a number of years in the bean packing industry in Wisconsin, and was formerly president of the Wisconsin Cannery Association. He was held in high regard by the canning industry and trade.

SHRIMP PACK IN OCTOBER

The pack of shrimp in October, as announced by the Shrimp Section of the Association, was 159,158 cases, as compared with 139,358 cases in the corresponding month last year. The pack from August 1 to October 31 this year totaled 384,328 cases, a decrease of 21 per cent as compared with the pack in the same months last year. The pack in September and October, by states, for the last two years follows:

State	September, 1931 Cases	September, 1932 Cases	October, 1931 Cases	October, 1932 Cases
Georgia	19,069	13,975	13,281	26,451
Florida	4,900	1,325	2,950	2,244
South Carolina	1,900	2,000
Alabama	15,844	8,082	9,733	9,700
Mississippi	54,773	1,600	52,272	43,220
Louisiana	76,339	107,173	43,652	61,592
Texas	14,645	10,800	15,470	15,951
Total	187,470	142,955	139,358	159,158

FROZEN AND PRESERVED FRUITS IN COLD STORAGE

Stocks of frozen and preserved fruits in cold storage on November 1 totaled 83,253,000 pounds as compared with 99,234,000 pounds on November 1, 1931, and a five-year average for November 1 of 76,030,000 pounds.

CAUSES OF COMMERCIAL BANKRUPTCIES ANALYZED

A detailed analysis of bankrupt manufacturers, wholesalers, retailers, and other business concerns has been made by the Department of Commerce in cooperation with the Institute of Human Relations and the Law School of Yale University, with the special assistance of Arthur Black, B. Loring Young, and Charles C. Cabot, referees in bankruptcy. The causes that give rise to failure in each type of business enterprise are analyzed from the experience of the concerns that failed. All the bankruptcies included in the report occurred in Boston, Mass., during the period from November, 1930, to June, 1931. Inefficient management, backed by the lack of economic opportunity, education, and business ability, was revealed as one of the most important causes of business failures. Other major causes of failure were revealed as adverse domestic and personal factors, unwise use and extension of credit, insufficient capital, and dishonesty and fraud. This report, published as "Causes of Commercial Bankruptcies," is available for 10 cents from the Superintendent of Documents, Washington, D. C.

N. C. A. MEMBERSHIP LIST MAILED

Copies of the Membership List of the National Canners Association, corrected to October 26th, have been mailed to members. Anyone failing to receive a copy is requested to advise this office promptly.

PROMOTES "FOOD FOR CHRISTMAS GIFTS"

In its November issue the *Progressive Grocer*, published in New York City, urges in its leading article that grocers seize the unusual opportunity they have this year to sell foods for gift purposes. The story is illustrated with pictures of window displays and gift baskets and furnishes suggestions for advertisements. The *Progressive Grocer* has also prepared a set of four window posters in two colors which it offers to grocers at a low price.

KOREAN SARDINE PRODUCTION

Officials of the Chosen Marine Products Canners Guild estimate that the Korean production of tomato sardines in 1932 will be about 80,000 cases, or 20,000 less than the maximum set by the government. The principal markets for these sardines are the Dutch East Indies, French Indo-China, other South Sea and Malayan regions, and France.

TOMATO JUICE INTRODUCED IN GERMANY

American tomato juice has been introduced in the German market, according to a report by the American consulate at Hamburg, but sales are handicapped by price difficulties and especially by the present foreign exchange restrictions. The German tariff on tomato juice amounts to about \$2.66 per case of 24 No. 2 cans.

ITALIAN TOMATO EXTRACT CANNING REGULATIONS

Tomato extracts or pastes and tomato juices intended for canning must be produced directly from the fruit while it is fresh, ripe, healthy and well-washed, and canned immediately after being produced, and in any case not later than October 31 of any year, in suitable hermetically sealed containers of tin or glass, of a capacity of not over 20 liters, according to a royal decree law of August 25, 1932, published in the *Gazzetta Ufficiale* of October 4.

Interested American firms may secure a copy of these Italian regulations upon request to the Foodstuffs Division of the Bureau of Foreign and Domestic Commerce at Washington, or to any of its district or cooperative offices.

FRANCE INCREASES DUTY ON JAPANESE SALMON

Canned salmon of Japanese origin, on importation into France, was made subject to an intermediate rate of import duty of 84 francs per 100 kilos within the limit of an annual contingent of 10,000 metric tons, effective September 25, 1932, by a decree published in the *French Journal Officiel* for September 23, 1932. Only shipments accompanied by certificates issued by the Japanese association of salmon canners, visaed by the French consular authorities, and within the fixed quantity, will be admitted at this rate of duty. Any other shipments will be subject to the general (maximum) rate of 300 francs per 100 kilos. Formerly, Japanese canned salmon was subject to the minimum rate of 75 francs per 100 kilos by virtue of the Franco-Japanese most-favored-nation commercial treaty of August 19, 1911. In addition to the import duty, Japanese canned salmon has been subject to a depreciated currency surtax of 15 per cent ad valorem since March, 1932, and continues subject to that surtax.

Canned salmon originating in the United States has been subject to the French general rate of duty for many years, and canned salmon originating in Canada has also been subject to the general rate since June 15, 1932, following the expiration of the Franco-Canadian commercial treaty of 1922.

BRITISH PREFERENTIAL DUTIES MADE EFFECTIVE

A British Treasury order has made effective on and after November 17 the preferential treatment that the United Kingdom agreed to extend to products of certain of its dominions as a result of a series of agreements concluded at the economic conference held at Ottawa last August. The prime purpose of this series of agreements, most of which are to remain in force for five years, is to increase the purchase from each other of many commodities now largely obtained by the various British areas from outside the Empire.

In return for new or increased preferences accorded by British dominions to products made in the United Kingdom, the United Kingdom agreed (1) to levy duties on certain foreign or non-Empire products, (2) to control by quotas the importation of beef, mutton, lamb, and pork products, (3) to continue to admit duty-free from the dominions certain products from foreign sources made dutiable under the Import Duties Act of 1932, and (4) not to reduce, except with the consent of the dominions concerned, the existing 10 per cent duty imposed on selected products under the Import Duties Act of 1932. Various canned foods are affected by this treasury order as follows:

On condensed milk, sweetened, the import duty on products of countries other than Canada, Australia, New Zealand, and South Africa, is increased from 5s.4d. plus 10 per cent ad val. to 10s.4d. per cwt.

On condensed milk, slightly sweetened, from other than the four countries above named, the duty is increased from 2s.1d. per cwt. plus 10 per cent ad val. to 7s.1d. per cwt.

On condensed milk, not sweetened, the duty is increased from 10 per cent ad val. to 6s. per cwt.

On canned fruit (except apples and stoned cherries) imported from countries other than Australia and South Africa, the duty is increased from 11s.8d. per cwt. of sugar content to 15 per cent ad val. plus 11s.8d. per cwt. of sugar content.

On canned apples imported from countries other than Canada, Australia, and South Africa, the duty is increased from 11s.8d. per cwt. of sugar content to 3s.6d. per cwt. plus 11s.8d. per cwt. of sugar content.

On canned salmon and other canned fish imported from countries other than Canada there will be continued the 10 per cent ad val. duty.

On canned meat from countries other than Australia and New Zealand, the 10 per cent ad val. duty will be maintained.

On fruit preserved by chemical or artificial heat, other than fruit preserved in sugar, and on fruit juices imported from countries other than the Union of South Africa, the 10 per cent duty will be continued.

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